

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

99 SEP -9 AM 10:04

U.S. DISTRICT COURT  
N.D. OF ALABAMA

WESTERN STEEL, INC., )

)

Plaintiff, )

)

v. ) CIVIL ACTION NO.98-JEO-1357-S

)

ENVIRONMENTAL EQUIPMENT &amp; )

SYSTEMS, INC.; METRIC )

CONSTRUCTORS, INC.; and )

INLAND STEEL CORPORATION, )

)

Defendants. )

**ENTERED**

SEP 09 1999

MEMORANDUM OPINION

In this matter, the plaintiff, Western Steel, Inc. ("Western") has filed a diversity action, asserting that it is due money under a promissory note executed by Defendant Environmental Equipment & Systems, Inc. ("Environmental") and for material supplied to Defendant Inland Steel, Inc. ("Inland") and Metric Constructors, Inc. ("Metric"). Inland and Metric filed separate motions to dismiss the claims against them. (Docs. 7 and 18). Western filed a motion for summary judgment. (Doc. 25).

On February 1, 1999, a magistrate judge entered a report and recommendation that the motion to dismiss filed by Inland be granted, that the motion to dismiss filed by Metric be granted unless Western met certain conditions, and that Western's motion for summary judgment be denied. (Doc. 31). Western filed an

objection to the report and recommendation, asserting that the dismissal as to Metric should be without prejudice to the claims pending in North Carolina state court in *Western Steel, Inc. v. Environmental Equipment & Systems, Inc., et al.*, 98-CVS-1837. No other objections have been filed. (Doc. 32).

On June 7, 1999, Western filed a "Renewed Motion for Summary Judgment" (doc. 35), wherein it asserts that it seeks to amend its motion for summary judgment by reducing the amount allegedly due and owing by \$7,500.00, as to which Western acknowledges there may be some issues of fact in dispute. Defendant Environmental has moved to strike the renewed motion as being untimely. (Doc. 37).

Upon a *de novo* review of the record, including the report and recommendation and Western's objection, the court finds that the motion to dismiss filed by Inland (doc. 7) is due to be granted with prejudice; Metric's motion to dismiss (doc. 18) is due to be granted with prejudice except as to the claims advanced in *Western Steel, Inc. v. Environmental Equipment & Systems, Inc., et al.*, 98-CVS-1837; and, Western's motion for summary judgment (doc. 25) is due to be denied. The court has also reviewed Western's renewed motion for summary judgment (doc. 35) and finds that it is due to be denied. Environmental's motion to strike (doc. 37) is moot. An

order consistent with this memorandum opinion will be entered contemporaneously herewith.

DONE this the 8<sup>th</sup> day of September, 1999.



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J. FOY GUIN, JR.

SENIOR UNITED STATES DISTRICT JUDGE